

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend House Bill No. 2704, Page 3, Line 6 1/2,

as follows:

By inserting new SECTIONS 3, 4 and 5 to read as per attached, by renumbering subsequent sections, and by amending the title to conform.

Submitted by:

Senator Debbe Leftwich

Leftwich-CD-FA-HB2704
4/23/2008 1:04 PM

1 SECTION 3. AMENDATORY 63 O.S. 2001, Section 330.58, as last amended by Section
2 11, Chapter 347, O.S.L. 2007 (63 O.S. Supp. 2007, Section 330.58), is amended to read as follows:

3 Section 330.58 The Oklahoma State Board of Examiners for Long-Term Care Administrators
4 shall:

5 1. Develop, impose, and enforce standards which must be met by individuals in order to
6 receive a license as a long-term care administrator, which standards shall be designed to ensure that
7 long-term care administrators will be individuals who are of good character and are otherwise
8 suitable, and who, by training or experience in the field of institutional administration, are qualified
9 to serve as long-term care administrators;

10 2. Develop and apply appropriate techniques, including examinations and investigations, for
11 determining whether an individual meets such standards;

12 3. Issue licenses to individuals determined, after the application of such techniques, to meet
13 such standards. The Board may deny an initial application, deny a renewal application, and revoke
14 or suspend licenses previously issued by the Board in any case where the individual holding any
15 such license is determined substantially to have failed to conform to the requirements of such
16 standards. The Board may also warn, censure, impose administrative fines or use other remedies
17 that may be considered to be less than revocation and suspension. Administrative fines imposed
18 pursuant to this section shall not exceed One Thousand Dollars (\$1,000.00) per violation. The
19 Board shall consider the scope, severity and repetition of the violation and any additional factors
20 deemed appropriate by the Board when issuing a fine;

21 4. Establish and carry out procedures designed to ensure that individuals licensed as long-term
22 care administrators will, during any period that they serve as such, comply with the requirements of
23 such standards;

1 5. Receive, investigate, and take appropriate action with respect to any charge or complaint
2 filed with the Board to the effect that any individual licensed as a long-term care administrator has
3 failed to comply with the requirements of such standards. The long-term care ombudsman program
4 of the Aging Services Division of the Department of Human Services shall be notified of all
5 complaint investigations of the Board so that they may be present at any such complaint
6 investigation for the purpose of representing long-term care facility consumers;

7 6. ~~Receive, investigate,~~ and take appropriate action on any complaint or referral received by
8 the Board from the Department of Human Services or any other regulatory agency. Complaints may
9 also be generated by the Board or staff. A complaint shall not be published on the website of the
10 Oklahoma State Board of Examiners for Long-Term Care Administrators unless there is a finding by
11 the Board that the complaint has merit. The Board shall promulgate rules that include, but are not
12 limited to, provisions for:

- 13 a. establishing a complaint review process, and
- 14 b. creating a formal complaint file;

15 7. Enforce the provisions of Sections 330.51 through 330.65 of this title against all persons
16 who are in violation thereof including, but not limited to, individuals who are practicing or
17 attempting to practice as long-term care administrators without proper authorization from the Board;

18 8. Conduct a continuing study and investigation of long-term care facilities and administrators
19 of long-term care facilities within the state with a view toward the improvement of the standards
20 imposed for the licensing of such administrators and of procedures and methods for the enforcement
21 of such standards with respect to administrators of long-term care facilities who have been licensed;

22 ~~8.~~ 9. Cooperate with and provide assistance when necessary to state regulatory agencies in
23 investigations of complaints;

24 ~~9.~~ 10. Develop a code of ethics for long-term care administrators which includes, but is not
25 limited to, a statement that administrators have a fiduciary duty to the facility and cannot serve as

1 guardian of the person or of the estate, or hold a durable power of attorney or power of attorney for
2 any resident of a facility of which they are an administrator;

3 ~~10.~~ 11. Report a final adverse action against a long-term care administrator to the Healthcare
4 Integrity and Protection Data Bank pursuant to federal regulatory requirements;

5 ~~11.~~ 12. Refer completed investigations to the proper law enforcement authorities for
6 prosecution of criminal activities;

7 ~~12.~~ 13. Impose administrative fines, in an amount to be determined by the Board, against
8 persons who do not comply with the provisions of this act or the rules adopted by the Board.

9 Administrative fines imposed pursuant to this section shall not exceed One Thousand Dollars
10 (\$1,000.00) per violation. The Board shall consider the scope, severity and repetition of the
11 violation and any additional factors deemed appropriate by the Board when issuing a fine;

12 ~~13.~~ 14. Assess the costs of the hearing process, including attorney fees;

13 ~~14.~~ 15. Grant short-term provisional licenses to individuals who do not meet all of the
14 licensing requirements, provided the individual obtains the services of a currently licensed
15 administrator to act as a consultant and meets any additional criteria for a provisional license
16 established by the Board;

17 ~~15.~~ 16. Order a summary suspension of an administrator's license or an Administrator in
18 Training (AIT) permit, if, in the course of an investigation, it is determined that a licensee or AIT
19 candidate for licensure has engaged in conduct of a nature that is detrimental to the health, safety or
20 welfare of the public, and which conduct necessitates immediate action to prevent further harm; and

21 ~~16.~~ 17. The Oklahoma State Board of Examiners for Long-Term Care Administrators shall
22 promulgate rules governing the employment of assistant administrators for long-term care facilities
23 including, but not limited to, minimum qualifications.

1 SECTION 4. AMENDATORY Section 4, Chapter 168, O.S.L. 2005, as amended by
2 Section 11, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2007, Section 330.64), is amended to read as
3 follows:

4 Section 330.64 A. Each investigation of a complaint received by the Oklahoma State Board
5 of Examiners for Long-Term Care Administrators shall be ~~completed~~ initiated within one hundred
6 eighty (180) days from the date the complaint is received by the Board. The ~~investigation time~~
7 period may be extended by the Board for good cause ~~for a maximum of two extensions of sixty (60)~~
8 ~~days. A public statement of all grounds for such extension shall be prepared and presented to the~~
9 ~~entire Board prior to the expiration of the initial one hundred eighty (180) days of the investigation.~~
10 ~~A majority vote of the Board is required to grant an extension of an investigation.~~

11 B. Effective May 13, 2005, the Board shall create and maintain a registry of all verified
12 complaints or other referrals complaining of acts or omissions of licensed administrators that have
13 been verified. The registry shall be maintained in both electronic and paper formats and shall be
14 available for inspection by the public. Such registry shall be organized in chronological order both
15 by the date of the complaint and by the name of the licensed administrator. The registry shall
16 contain information about the nature of the complaint and the action, if any, taken by the Board. The
17 registry shall also contain the number of complaints made against an individual administrator.

18 SECTION 5. AMENDATORY Section 5, Chapter 168, O.S.L. 2005, as amended by
19 Section 12, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2007, Section 330.65), is amended to read as
20 follows:

21 Section 330.65 A. Any decision by the Oklahoma State Board of Examiners for Long-Term
22 Care Administrators pursuant to a complaint received against an individual administrator shall be
23 voted upon by a quorum of the Board in an open meeting.

24 B. ~~At least five (5) working days prior~~ Any person or agency may submit to the Board a
25 complaint against a long-term care administrator. Complaints may also be generated by the Board

1 ~~or staff meeting at which a decision will be made, each member of the Board shall be furnished a~~
2 ~~complete written report which shall include, but not be limited to, the following information:~~

3 ~~1. The exact nature of the complaint(s);~~

4 ~~2. The identity of the administrator;~~

5 ~~3. A description of the investigation;~~

6 ~~4. The identity of the investigator;~~

7 ~~5. The identity of the witnesses interviewed, unless the witness wishes to remain anonymous~~
8 ~~and is a current resident, a current staff member, or the personal or legal representative of a current~~
9 ~~resident;~~

10 ~~6. A description of documents or other tangible items examined in the course of the~~
11 ~~investigation;~~

12 ~~7. All evidence obtained that would directly or by reference establish the ultimate fact of the~~
13 ~~complained act or omission; and~~

14 ~~8. All evidence that would either explain or mitigate the complained act or omission.~~

15 ~~C. Each complaint shall be acted upon pursuant to a motion after an opportunity for~~
16 ~~discussion by the A committee or committees of three Board members appointed by the chair.~~

17 ~~Following discussion of the evidence, any member of the Board shall review complaints to~~
18 ~~determine if probable cause exists that a violation of this act or the rules of the Board has occurred.~~

19 ~~No committee shall be entirely composed of board members who are long-term care administrators.~~

20 ~~The committee may investigate the allegations, and, if this committee determines that such probable~~
21 ~~cause exists, this committee shall draft a formal complaint against the long-term care administrator~~

22 ~~alleged to have committed the violation make a motion to continue the investigation in order to~~

23 ~~gather additional evidence or to make further inquiries. The investigation may be extended for sixty~~

24 ~~(60) days upon a finding of good cause as provided for in subsection A of Section 330.64 of this~~

1 ~~title. If the motion to extend the investigation fails, the Board shall vote upon the merits of the~~
2 ~~complaint.~~

3 D. ~~No recommendation on a~~ The formal complaint shall be made submitted to the respondent
4 who shall answer and may submit exculpatory evidence. Further investigation of the complaint may
5 be conducted. Board by a subcommittee or a staff member of the Board. Each member of the Board
6 shall vote based on the evidence presented in the report required pursuant to the provisions of this
7 section.

8 E. ~~The~~ To ensure the confidentiality of information obtained during the investigation, the
9 information report furnished to the Board pursuant to the provisions of this section shall be
10 considered a confidential investigation document until a motion to vote on the complaint is made, at
11 which time the report shall not be deemed to be considered a public record as that term is defined in
12 the Oklahoma Open Records Act nor shall the information be subject to subpoena or discovery in
13 any civil or criminal proceeding, except that the Board may give the information to law enforcement
14 and other state licensing agencies as necessary and appropriate in the discharge of the duties of that
15 agency and only under circumstances that will ensure against unauthorized access to the
16 information. ~~After the vote upon the complaint is made and recorded, the Board shall maintain as a~~
17 ~~public record a full and complete copy of the investigation~~ The respondent may acquire information
18 obtained during an investigation, unless the disclosure of the information is otherwise prohibited,
19 except for the investigative report, if the respondent signs a protective order whereby the respondent
20 agrees to use the information solely for the purpose of defense in the Board proceeding and in any
21 appeal therefrom and agrees not to otherwise disclose the information indexed by docket number or
22 similar internal reference.

23 F. Upon completion of an investigation, the probable cause committee may make a
24 recommendation to the Board to set the case for hearing, or for dismissal or other action.

1 G. The respondent may be given an opportunity to participate in an informal resolution of the
2 case. Discussions to resolve the case without a hearing may be conducted by the Director, the
3 prosecutor of the Board, or both the Director and the prosecutor, in consultation with the probable
4 cause committee. Any recommendation for informal resolution shall be presented to the Board for
5 its consideration and approval.

6 H. Notice of a Board decision issued to a long-term care administrator who is the subject of a
7 complaint shall be issued. If the case is not resolved, the respondent shall be afforded notice and a
8 hearing in accordance with the provisions of Article II of the Administrative Procedures Act
9 governing individual proceedings. Any request for The members of the probable cause committee
10 that reviewed the complaint shall recuse themselves from any participation in a hearing by a long-
11 term care administrator regarding the proposed action of the Board shall be received by the Board
12 within ten (10) days of the receipt of the notice of the Board decision by the long-term care
13 administrator. Any party aggrieved by a decision of the Board following a hearing may appeal
14 directly to district court pursuant to the provisions of Section 318 of Title 75 of the Oklahoma
15 Statutes.